

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/18/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000446

FILED: _____

STATE OF ARIZONA

CARRIE M COLE

v.

JARED PATRICK GOODALE

GEORGE E MUELLER

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #TR200018255

Charge: 1. DUI/ALCOHOL
2. DUI W/BAC OF .10 OR HIGHER
4. FAILURE TO DRIVE IN A SINGLE LN
5. FAILURE TO STOP FOR A STOP SIGN

DOB: 02/23/76

DOC: 07/28/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument on December 5, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Scottsdale City Court, and the Memoranda submitted by counsel.

Appellant was accused of committing the following crimes on or about July 28, 2000 within the City of Scottsdale: (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Content of .10 or Greater, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382(A); Failure to Drive Within a Single Lane, a civil traffic violation in violation of A.R.S. Section 28-729.1; and Failure to Stop for a Stop Sign, a civil traffic violation in violation of A.R.S. Section 28-855(B). Appellant filed a Motion to Suppress/Dismiss based upon an alleged violation of his right to remain silent and right to counsel. An evidentiary hearing was held March 23, 2001 and at the conclusion of the hearing the trial judge denied Appellant's motion. Thereafter the parties submitted the case to the judge and waived their rights to a jury trial. On June 13, 2001, Appellant was found guilty of all charges except the Extreme DUI charge. Appellant was sentenced to serve 30 days in jail on the DUI charges and ordered to complete an Alcohol Screening and Alcohol Education and Treatment Program. Appellant was ordered to pay fines of \$895.00. Appellant filed a timely Notice of Appeal in this case.

The only issue raised by Appellant on appeal is whether the trial judge erred in denying his Motion to Suppress/Dismiss. This Court must review this case *de novo* since Appellant's claim involves a violation of a constitutional right.¹ However, this

¹ State v. Gonzalez-Gutierrez, 187 Ariz. 116 927 P.2d 776 (1996); Ramirez v. Health Partners of Southern Arizona, 193 Ariz. 325, 972 P.2d 658 (App. 1998).

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Court must defer to the trial court's factual findings that form the basis for its legal ruling.²

The trial judge ruled:

The Motion to Suppress- the Motion to Suppress and the Motion to Dismiss is denied. I feel that the Miranda Rights were established and I think that the parameters of Miranda were in fact followed here.³

The trial judge further found:

I find that when they were given the Miranda Rights, they were in custody at that point and time. Before that time, it was investigative custody.⁴

The facts of this case indicate that the Scottsdale police officers stopped Appellant based upon their reasonable suspicions that he had committed traffic violations and was possibly impaired by consumption of alcohol. Appellant contends that the preliminary questions conducted roadside by the Scottsdale police officers required that Appellant be advised of his Miranda Rights. The trial judge correctly concluded that this was an investigative detention of such a limited nature that it did not constitute a custodial interrogation. The police were not required to advise Appellant of his Miranda Rights at the time of the traffic stop and limited investigative detention.⁵

Appellant next contends that his right to counsel was violated when the Scottsdale police continued to process his

² State v. Gonzalez-Gutierrez, supra

³ R.T. of March 23, 2001 at page 36 (the transcript was prepared at Appellant's request and attached as an appendix to his memorandum).

⁴ Id. at page 37.

⁵ Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138 (1984).

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arrest after he invoked his right to speak with an attorney. Appellant requested information about when he could contact an attorney after the initial investigation, after his blood had been drawn, and after he had been advised of his Miranda Rights. At that time, Officer Paliwoda terminated the investigation and turned Appellant over to other officers for processing into the jail and ultimately, his release. Appellant had access to a telephone to contact an attorney inside the jail.

The trial judge correctly concluded that Appellant's Miranda Rights were respected by the Scottsdale police officers, who immediately terminated their interview with Appellant when he asked to contact an attorney. No questions were asked of Appellant after that point and time and no further statements were made by Appellant. This Court finds no violation of Appellant's Fifth Amendment Rights.

This Court also concludes that the trial judge correctly found no violation of Appellant's Sixth Amendment Rights in that no evidence was collected after Appellant requested to speak with an attorney. Appellant was given the opportunity to speak with an attorney by telephone after his processing in the jail.

For all of these reasons, this Court concludes that the trial judge did not err in denying Appellant's Motion to Suppress/Dismiss.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all future and further proceedings.